

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

Treatment of Rate Incentives  
And De Minimis Rate Increases  
For Price Cap Purposes

Docket No. RM2014-3

**REPLY COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE**

Pursuant to Postal Regulatory Commission (“Commission” or “PRC”) Order No. 1879, the Association for Postal Commerce ("PostCom") hereby submits these comments in reply to the initial comments filed in this docket, particularly the Initial Comments of the United States Postal Service (“USPS Initial Comments”).

**I. THE PROPOSED RULES PROPERLY EXCLUDE RATE INCENTIVES NOT OF GENERAL APPLICABILITY FROM THE CALCULATION OF THE ANNUAL PRICE CAP LIMITATION**

As PostCom stated in its initial comments, proposed rules 3010.23(e) and 3010.24 take the correct approach in requiring the Postal Service to treat incentive rates not of general applicability as Negotiated Service Agreement (“NSA”) rates and treat all volume mailed at these incentive rates as if it had been mailed at the full rate when calculating compliance with the price cap. The Postal Service, by contrast, opposes this approach and contends that these incentives should be included in the price cap calculations, thus allowing the Postal Service to generate price cap authority through the creation of such incentives. USPS Initial Comments at 5-6. The Commission should reject the Postal Service’s proposal.

As PostCom explained in its initial comments, treating incentives not of general applicability like NSA rates both protects mailers who are not eligible from the incentive from

rate increases and achieves the Commission's goal of providing "more certainty for the Postal Service and the mailing community as they make decisions that rely upon the Postal Service's authority to adjust rates for market dominant products." NOPR at 1- 2. Treating targeted incentive volume as if it travelled at full rates eliminates the need to perform complicated calculations of rate adjustment authority. It establishes a simple rule that allows the Postal Service to focus on the operational and economic benefits of offering the incentive (*e.g.*, whether the targeted incentive will increase mail volume and revenue or reduce costs), and it allows mailers to evaluate the incentive on its own merits. Whereas mailers, especially smaller mailers, are adept at evaluating whether a price provides sufficient incentive to participate in an incentive program, they may not have the tools or sophistication to make this same determination if they must also figure out how the incentive rate will factor into future price adjustments that may result in higher rates over the long term.

The Postal Service, however, claims that the proposed rule would "keep the Postal Service from using its entire CPI pricing authority established by 39 U.S.C. § 3622(d)." USPS Initial Comments at 6. In reality, the proposed rule would not in any way reduce the pricing authority available to the Postal Service. It simply limits the creation of *additional* pricing authority through the implementation of discounts which are only available to a subset of mailers. Nevertheless, the Postal Service claims that limiting its pricing authority in this way would "discourage the Postal Service from developing targeted rate incentives that could more effectively drive beneficial mailer behaviors." *Id.* This reasoning is similarly unavailing. The Postal Service should only be offering rate incentives if they provide a benefit to the Postal Service, either by driving more volume into the system or encouraging beneficial mailer behaviors. In either case, the incentives should increase the Postal Service's bottom line, either by increasing revenue or reducing costs. In other words, the Postal Service should not need to

make up any foregone revenue resulting from targeted incentives as the incentives should be increasing the Postal Service's revenue in relation to its costs.

Incentives of limited applicability should benefit all mailers by increasing the profitability and efficiency of the Postal Service. That is, just like an NSA, offering a rate incentive to a limited group of mailers is justified by its potential to “[i]mprove the net financial position of the Postal Service.” 39 U.S.C. §3010.40(a)(1). If the Postal Service were to offset these incentives with rate increases for other mailers, however, mailers ineligible for the discounts would be harmed by the incentives instead of benefitting from the overall improved financial condition of the Postal Service. As the justification for allowing the Postal Service to offer targeted incentives is identical to the justification for allowing the Postal Service to execute NSAs, the rates resulting from each approach should be treated similarly in calculating pricing authority. The approach of the proposed rules is therefore logical and consistent with the Commission's goals.

Further, the Postal Service does not dispute the Commission's finding that it would be “unfair to force mailers (who do not participate in a rate incentive) to fund reduced rates for other mailers.” USPS Initial Comments at 5. Rather, it defends this result, claiming that “this type of cross funding is an inherent aspect of the price cap.” *Id.* There is nothing “inherent” in the price cap that dictates this result; the application of the price cap is determined by the rules set by the Commission. While cross-funding is generally allowed within a class within the context of Type 1-A or Type 1-B rate change, the proposed rules address a specific situation in which the Postal Service reduces rates for a subset of mailers based on factors other than the characteristics of the mail to which the rate applies. The Commission is well within its authority

to prevent that unfairness the Postal Service acknowledges would result if the Postal Service were to force mailers who are not beneficiaries of the incentives to bear additional costs.

To further guard against this unfairness, to the extent that the Commission's final rules allow the Postal Service to create additional price adjustment authority through the establishment of mid-year promotional and incentive programs (whether of general applicability or limited applicability), the rules should clarify that any cap authority created should be applied only to those products which were eligible for the promotional or incentive rates. That is, the Postal Service should not be permitted to use any adjustment authority created to increase rates generally across a class. Instead, the additional adjustment authority should be tied to individual products. The Commission recognized this principle in Order No. 1541, allowing the Postal Service to account for revenue foregone from promotions only "so long as volumes are properly ascribed to the appropriate products." Order No. 1541 at 18.

## **II. THE COMMISSION SHOULD CLARIFY THE TREATMENT OF DELETED RATE CELLS**

The National Postal Policy Council ("NPPC") noted in its initial comments an ambiguity regarding the application of proposed rule 3010.23(d)(4). Specifically, NPPC urged the Commission to clarify "that proposed section 3010.23(d)(4) would not apply in the type of situation addressed in Order No. 1890, where the Commission held that the Postal Service had redefined or deleted rate cells in its effort to impose a mandatory Full Service Intelligent Mail Barcode requirement." NPPC Initial Comments at 6. The Postal Service, too picked up on this issue, asking whether it would have been required to apply the proposed rule to the Full Service IMb issue. USPS Initial Comments at 7.

PostCom urges the Commission to clarify the rule as requested by NPPC. As NPPC notes, in Docket No. R2013-10, alternate rate cells were available, and it appears the proposed

rule would not have applied. As the Commission correctly recognized in Order No. 1890, the Postal Service had billing determinants by which it could calculate the price cap impact of its proposed change, and that change exceeded the price cap when volumes were properly accounted for.

Further, PostCom opposes the Postal Service's request that the Commission delay the implementation of this rule until the D.C. Circuit reaches a decision on the Postal Service's appeal of Order No. 1890. USPS Initial Comments at 8. As the proposed rule would not have applied to the Postal Service's actions in R2013-10, the court's decision will have no bearing on the implementation of the proposed rule.

### **III. THE COMMISSION SHOULD MAINTAIN THE PROPOSED THRESHOLD FOR DE MINIMIS RATE INCREASES**

The Postal Service urges the Commission to increase the threshold for de minimis rate adjustments from the 0.001 percent contained in the proposed rule to as high as 0.05 percent. USPS Initial Comments at 9, n.18. The Postal Service claims that an increase is necessary to provide it with meaningful additional pricing flexibility. Initial Comments at 8-9.

PostCom opposes raising this threshold. The limiting threshold is necessary to ensure that the Postal Service does not use the de minimis increase rules "to circumvent the annual limitation." NOPR at 14. While the Postal Service may be correct that the proposed rules do not provide a significant degree of pricing flexibility, that result is warranted. The proposed rule is addressed at situations such as the change to the Move Update Assessment threshold in Docket No. R2011-1, which would have changed rates only by 0.0004 percent. The 0.001 percent threshold provides the Postal Service with sufficient flexibility to make minor technical corrections to rates; if it needs to make large corrections, it should be required to calculate an annual limitation.

#### **IV. THE COMMISSION SHOULD IMPLEMENT TRUE-UP PROVISIONS**

Finally, PostCom reiterates its position in its initial comments that to the extent the proposed rules allow the Postal Service to immediately create unused rate authority through the implementation of incentive rates, the Commission should require the Postal Service to reconcile the volume sent at the incentive rates with the adjustment authority it claims in its next scheduled price adjustment. Requiring the Postal Service to true-up volumes sent at incentive rates during its next scheduled rate change would ensure that any changes in price adjustment authority reflect only volumes that actually travelled at promotional or incentive rates and that these volumes are attributed to the appropriate products. In doing so, it would protect against overstating the price authority created through promotions and incentives. *See* Order No. 1541 at 17.

Respectfully submitted,

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April 16, 2014